Winter 2022/2023

Estate Planning Update Winter 2022/2023 - With Fame And Fortune Should Come Estate Planning

Anne Heche, the actress who rose to fame after her role in the 1997 film *Donnie Brasco*, died on August 11, 2022, following a tragic car crash. Despite her fame and the complexities of her blended family, Heche died without a will. Her untimely death and the ensuing litigation over control of her estate is yet another reminder of the critical importance of estate planning. At its most basic level, proper estate planning includes a will, and in many cases, a revocable trust. These documents work in tandem to provide parameters for the distribution of property, identify desired beneficiaries, and appoint the persons or entities to carry out key roles in the estate and trust administration process, including:

- an executor, or personal representative, who is responsible for managing the estate;
- a guardian, who cares for children if both parents die while a child is a minor; and
- a trustee, who invests, manages and distributes trust property in accordance with the terms of the trust agreement.

When a person dies without a valid will, state law dictates who manages the estate as fiduciary and who receives the assets as beneficiary. This is called intestacy. Although the rules of intestacy vary depending on the state in which the deceased person lived, intestacy generally results in dividing the estate assets among a spouse and children or other related individuals, who receive assets outright at age 18. It also entitles individuals to serve as administrator based on how closely related they are to the decedent. For instance, a spouse may manage an estate payable to children who are not hers, or multiple children have equal rights to manage an estate even if one is estranged from his deceased parent. These "default" rules can wreak havoc on an already mourning family. As Heche's case illustrates, intestacy can be a particularly poor outcome in the context of blended families. Heche was divorced at the time of her death. She is survived by an adult son, Homer, 20, from her prior marriage, and a minor son, Atlas, 13, whom she shared with her longtime partner, James Tupper. Litigation ensued almost immediately after Heche's death between Homer, who petitioned a California court to be appointed as administrator of the estate, and Tupper, who argues that a 2011 e-mail from Heche, in which she states that her assets are to "go to the control of Mr. James Tupper," constitutes a will naming him as executor. Ultimately, the court appointed Heche's adult son as the estate's administrator over Tupper's objections. State laws vary on whether a document constitutes a will when it is not executed with certain requisite formalities. For instance, a "holographic will" can be valid in some states if the material terms and signature are in the decedent's handwriting. Other materials can qualify as wills in some states if they are proven to be intended by the decedent as a will. It remains to be seen whether Heche's e-mail qualifies as a will under California law, but what is evident is that much family acrimony—not to mention expense—could have been avoided had Heche worked with a trusts and estates lawyer to create a customized estate plan tailored to her particular family dynamics and goals. Heche may be the most recent example of this unfortunate trend, but she is far from the only celebrity whose family has endured protracted and public litigation due to an absence of basic estate planning. Other high-profile figures who died without estate planning include:

- **Prince**, whose $156 million estate was settled in 2022 after six years of litigation among his half-siblings and others claiming to be heirs;
- **Howard Hughes**, one of the wealthiest men of his time, integral to the development of modern aircraft and whose life was portrayed by Leonardo DiCaprio in the 2004 film The Aviator, died intestate in 1976 with billions of dollars, allegedly unwed and with no children, and an estate disposition that cost millions of dollars and more than 30 years of litigation to

resolve dubious claims by many and that ultimately went, in part, to multiple cousins whom he allegedly did not know or want to benefit;

- **Aretha Franklin**, who died in 2018 leaving unsigned drafts of wills, which led to years of bitter litigation among her heirs;
- **Amy Winehouse**, whose parents inherited her entire estate following her death in 2011 at age 27 only to face litigation involving Winehouse's ex-husband, who filed a claim against her estate in 2019;
- **Jimi Hendrix**, whose death without a will at age 27 in 1970 led to legal battles lasting for decades; and
- **Pablo Picasso**, whose intestate estate took six years and $30 million in legal fees to resolve following his death in 1973, all because—according to his lawyer—Picasso was superstitious and believed avoiding estate planning was a way of avoiding death itself.

Not updating an estate plan could have similar devastating effects. For example, Heath Ledger died unexpectedly in 2008 with a will that predated the birth of his daughter, Matilda, and purported to leave his estate to his parents and siblings. Litigation ensued that settled with Ledger's estate being paid to his daughter. Although many states have laws that would protect children born after the date of a parent's will, they do not come without the cost of court actions and the loss of proper trust planning. The litigation and negative publicity caused by stories like the foregoing could have been significantly reduced, if not avoided altogether, had appropriate estate planning been undertaken and kept current. Estate planning would have allowed the person to designate their fiduciaries, identify their beneficiaries and establish trusts to help privately guide the use and distribution of assets in tax-efficient and creditor-protective ways. While not many people are in the spotlight like celebrities are, the experiences of the famous illustrate the need to take control to establish and maintain an estate plan reflective of desires and protective of intended beneficiaries. Day Pitney Estate Planning Update- Winter 2022/2023 (pdf)